

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 24, 2011

In the Matter of H. M. BURLINGHAM, Minor.

No. 300386

Van Buren Circuit Court

Family Division

LC No. 10-016826-NA

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent A. M. Mays appeals as of right the trial court's order terminating her parental rights to her minor child, H. M. Burlingham under MCL 712A.19b(3)(g)¹ and MCL 712A.19b(3)(m).² We affirm.

I. FACTS

The minor child was born in May 2010. Tests taken at the time of the birth indicated that Mays had used marijuana 30 to 90 days before the child's birth. The Department of Human Services (DHS) sought termination of Mays's parental rights to the child, citing that Mays's parental rights to two other children had been previously terminated. (The terminations regarding the other children were pursuant to Mays's consent after child protective proceedings had been initiated.) DHS removed the minor child in this case from Mays's care in June 2010.

Mays only visited the child once after DHS removed the child from her care. Although a second visit was scheduled, Mays missed the visit and never scheduled any further visits. Mays

¹ MCL 712A.19b(3)(g) (stating that the trial court may terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that the parent, without regard to intent, failed to provide proper care or custody and there is no reasonable expectation that the parent will be able to provide such within a reasonable time considering the child's age).

² MCL 712A.19b(3)(m) (stating that the trial court may terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that the parent's rights to another child were voluntarily terminated following initiation of proceedings under MCL 712A.2(b) or a similar law of another state).

testified that she had lacked transportation to the second visit and also lacked a way to contact DHS regarding further visits.

At the time of the termination hearing, Mays was living with her boyfriend C. Burlingham (the child's biological father), his parents, and his grandmother in a three-bedroom home. Mays testified that she was still married to her husband, S. Mays, but she was seeking a divorce. Although Burlingham is the biological father of the child, the child's legal father is S. Mays, to whom Mays was married at the time of the child's birth. S. Mays' parental rights to the child were terminated pursuant to his release, and he is not a party to this case.

Before living with Burlingham, Mays lived in at least three or four different places in the previous year. But she testified that she could not remember all of the places where she lived because there had been so many of them. Mays testified that she did not contribute money for rent or utilities. She was receiving food stamps, and she testified that she made some money by mowing lawns and cleaning. Mays testified that she had made \$30 the previous week. She testified that she did not have the financial ability to visit the child at the time of the termination hearing, yet she claimed that she would find a way to care for the child if she were placed in her care. Mays further testified that she had a driver's license and had purchased a car the day before the hearing, but she admitted that she could not drive it until she had the money for plates and insurance. Mays testified that when her other children were removed from her care she was homeless, but she pointed out that she now had a home with Burlingham and his family. She testified that she was looking for a job and that she would be ready to care for the child when she found one. She further testified that Burlingham had suffered a heart attack recently, and his medical care had caused additional financial problems.

Foster care worker Gail Cole testified that Mays had completed an IQ evaluation and was evaluated at low average intelligence. Mays had yet to complete the remainder of the psychological evaluation. Cole testified that she believed termination was in the child's best interests because there was no real bond between Mays and the child. Cole further testified that before the child could be placed with Mays, Mays would have to demonstrate a legal means to provide for herself and the child, and be able to demonstrate a stable and consistent lifestyle. Cole noted that Mays had shown no progress since the case began. Cole further testified that Mays's lack of involvement with the child indicated that Mays lacked the ability to parent the child and was unlikely in the near future to acquire the ability, skills, and resources necessary to care for the child.

At the conclusion of the termination hearing, the trial court terminated Mays's parental rights, finding that the statutory grounds had been demonstrated by clear and convincing evidence. The trial court further found that termination was in the child's best interests. Mays now appeals from the trial court's order.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

Mays contends that the trial court erred in finding that clear and convincing evidence supported termination under the statutory provisions, arguing that she was denied due process.

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.³ We review for clear error a trial court's decision terminating parental rights.⁴ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁵ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁶

B. MCL 712A.19b(3)(g)

The record demonstrates ample evidence to support the trial court's finding that termination of Mays's parental rights to the child was warranted pursuant to MCL 712A.19b(3)(g). When the child was born, tests indicated that Mays had used marijuana during the pregnancy. Mays did not have independent housing; she was living with her boyfriend and his family, even though she was still married to another man. She had no job and virtually no income other than food stamps. After the child's birth, Mays made no effort to accomplish any of the tasks that would enable her to provide care and custody for the child in the future. She visited the child only once, and she had virtually no contact with the foster care worker. Mays claimed that her financial difficulties prevented her from both visiting the child and contacting DHS regarding the child. But in the approximately 2-1/2 months between the date that the child was born and the date of the termination hearing, Mays accomplished nothing that would demonstrate any ability or willingness to take proper care and custody of the child then or within a reasonable time.

C. MCL 712A.19b(3)(m)

The record also supports the trial court's finding that termination was warranted pursuant to MCL 712A.19b(3)(m). It was undisputed that Mays's parental rights to two other children had been terminated previously upon her voluntary consent after child protective proceedings were initiated.

D. DUE PROCESS

Mays nevertheless contends that the trial court's termination of her parental rights after only 2-1/2 months of services was a deprivation of due process and that she was entitled to additional time and opportunity to demonstrate that she could care for the child. We disagree.

³ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

⁴ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours*, 459 Mich at 633.

⁵ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁶ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Parents have a significant interest in the custody of their children and that interest is an element of liberty protected by due process.⁷ However, at the time of termination in this case, if there was a risk of harm and the parent's rights to another child were voluntarily terminated after the initiation of proceedings, there was a sufficient aggravating circumstance for DHS to seek immediate termination without making reasonable efforts to reunify the family.⁸

Here, the trial court found that Mays had in the past endangered her other children. And there is no dispute that Mays's parental rights to other children were voluntarily terminated after child protective proceedings were initiated. DHS therefore was obligated to seek authorization of a petition against Mays, and Mays's argument that due process entitled her to more time or additional opportunity to demonstrate an ability to parent the child is without merit.

We conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Mays's parental rights under MCL 712A.19b(3)(g) and (3)(m).

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Mays contends that the trial court clearly erred in finding that clear and convincing evidence demonstrated that termination was in the child's best interest.

Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.⁹ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹⁰ We review the trial court's decision regarding the child's best interests for clear error.¹¹

B. ANALYSIS

We also find no error in the trial court's finding that termination was in the child's best interests. The record contains ample evidence supporting the trial court's finding that termination of Mays's parental rights was in the child's best interests. Mays had no bond with

⁷ *In re JK*, 468 Mich at 210.

⁸ MCL 712A.19a(2)(a); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). See also prior version of MCL 722.638(1)(b). 2010 PA 12, effective September 4, 2010, rewrote MCL 722.638(1)(b).

⁹ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

¹⁰ *In re Trejo*, 462 Mich at 353.

¹¹ *Id.* at 356-357.

the child and had virtually no contact with the child. Mays made no effort to visit with the child after seeing her only once and had little contact with the foster care worker. Mays did not have independent housing, had essentially no income, and appeared to have no particular plan to obtain either employment or independent housing. In the approximately 2-1/2 months following the child's birth, Mays made no progress and exerted no discernable effort. In light of the evidence on the whole record, the trial court did not clearly err in finding that termination was in the child's best interests.

We affirm.

/s/ Elizabeth L. Gleicher

/s/ William C. Whitbeck

/s/ Donald S. Owens